

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 1161 of 2024

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Kamlesh Prasad Son of Late Punit Prasad, Village- Nagwan, Post- Tiuri,
Police Station- Manpur, District- Nalanda, Bihar- 803101.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The Regional Deputy Director, Education, Patna Division, Patna.
5. The District Education Officer, District- Nalanda.
6. The District Programme Officer (Establishment), Nalanda.
7. The District Treasury Officer, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Prabhakar Sahai, Advocate
For the Respondent/s : Mr H S Goldie, AC to GP VI

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CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 03-01-2025

The challenge in the present writ petition is to the order (Annexure P3) dated 04.08.2023 issued by the District Programme Officer (Establishment), Nalanda whereby and whereunder the money worth Rs 2,17,738/- has been adjusted from the retiral benefits of the petitioner.

2 The facts of the case are that the petitioner was appointed as Clerk on compassionate ground in the office of the District Superintendent of Education, Nalanda on 28.12.1990.



After completion of stipulated period, he received the benefit of first, second and third MACP in the year 2002, 2014 and 2021 respectively. He retired from the post of Clerk on 30.06.2023 from the office of the District Education Officer, Nalanda and, accordingly, his pension was verified from the office of the Accountant General (A & E), Bihar, Patna. Thereafter, the District Programme Officer (Establishment), Nalanda issued Letter No 2879 dated 04.08.2023 (Annexure P3) and instructed the Treasury Officer, Nalanda to adjust the amount of Rs 2,17,738/- from the retiral dues of the petitioner as it was given due to wrong pay fixation in favour of the petitioner. Hence, this petition has been filed.

3 The learned counsel for the petitioner would submit that the said excess amount has been paid because of the alleged wrong fixation of pay done by the respondents. According to him, it is not the case of the respondents that the said excess payment has been made on account of any fraud or misrepresentation for which the petitioner has been instrumental. He further submits that the said recovery is also bad in the light of the judgment of the Hon'ble Supreme Court in the case of *State of Punjab & Others -Versus- Rafiq Masih (White Washer)*, reported in *2015 AIR SCW 501*. He further submits that before issuance of such order of



recovery (adjustment), the respondents have not given any opportunity of hearing to the petitioner.

4 The learned counsel for the respondents opposes the argument raised by the petitioner and submitted that, admittedly, the petitioner has been paid something extra which otherwise he was not entitled for. Immediately, on the respondents detecting excess payment to the petitioner, they have issued the impugned order of recovery/adjustment.

5 Having heard the contention put forth by either side and on perusal of the record, it appears that, admittedly, the petitioner retired from the post of Clerk, which is a Class III post, on 30.06.2023. The alleged excess payment has been made to the petitioner since 01.07.2007 which is more than 16 years prior to the order of recovery. It is not the case of the respondents that there has been any misrepresentation made by the petitioner for getting the said erroneous pay scale.

6 Under the aforesaid facts, it would be useful at this juncture to refer to the judgment in the case of ***Rafiq Masih (supra)*** wherein it has been very emphatically held by the Supreme Court that in the given situation, the recovery would be impermissible under the law. Relevant parts of Paragraph 11 is reproduced hereunder:



“11recovery of excess payments, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee’s retirement, or within one year of the date of his retirement on superannuation.”

7 Some of the situations where the recovery is impermissible have been mentioned in paragraph 12:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:



(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

8 Taking into consideration the aforesaid situation and comparing the same with the facts of the present case, I am of the opinion that the case of the petitioner stands squarely covered by the Supreme Court in the case of **Rafiq Masih (supra)**.

9 Thus, the impugned order of recovery (Annexure P3) dated 04.08.2023 is not sustainable and is, accordingly, set aside/quashed. The writ petition stands allowed.

10 The respondents are directed that amount whatever has been recovered till now, the same shall be refunded to the



petitioner forthwith preferably within a period of 60 days from the date of receipt of a copy of this order.

(Arvind Singh Chandel , J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.01.2025
Transmission Date	08.01.2025

